IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

WP(C).No. 15163 of 2006(E)

PETITIONER:

P.K.ABDU RAHIMAN, ASSISTANT EDUCATIONAL OFFICER (RTD), MAJLIS -3, POLYMER ROAD, KUTTIPURAM POST, MALAPPURAM DISTRICT.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DEPUTY DIRECTOR OF EDUCATION, MALAPPURAM.**

BY GOVERNMENT PLEADER SMT.REMANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO. 15163/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE GRATUITY PAYMENT ORDER NO.P13/BH/G/61910715 DT. 13.5.05 ISSUED BY ACCOUNTANT GENERAL (A&E) , KERALA.

EXT.P2:- COPY OF THE NOTICE NO.G2/29589/05 DT. 23.1.06 ISSUED BY THE 2ND RESPONDENT, TO THE PETITIONER.

EXT.P3:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE DEPUTY DIRECTOR OF EDUCATION, MALAPPURAM DT. NIL.

EXT.P4:- COPY OF THE G.O.(P) NO.46/06/G.EDN. DT.1.2.06 ISSUED BY THE 1ST RESPONDENT.

EXT.P5:- COPY OF THE JUDGMENT DT. 3.4.07 WA. 886/07 OF THIS HONOURABLE COURT.

EXT.P6:- COPY OF THE ORDER NO.G2/21355/07/K.DIS. /DPI DT. 24.7.07 ISSUED BY THE DIRECTOR OF PUBLIC INSTRUCTIONS.

/TRUE COPY/

P.S. TO JUDGE

tss

V.GIRI, J.

W.P.(C).No.15163 of 2006 E

Dated this the 22nd day of October, 2007.

JUDGMENT

The petitioner retired as Assistant Educational Officer on 31.3.2005. By Ext.P1 order, the Accountant General sanctioned Rs.1,97,128/- as gratuity admissible to the petitioner. Subsequently, by Ext.P2 dated 23.1.2006, the Department proceeded to fix a liability, allegedly on account of an irregular approval of appointment sanctioned by the petitioner to two teachers Smt.Jaseela P.K. and Sri.Renjith. The liability so fastened comes to Rs.1,64,274/-. There is objection on the part of the petitioner. But during the pendency of this writ petition, the liability proposed in Ext.P2 was finalised. In the meanwhile, the concerned two teachers had approached this court. This led to Ext.P5 judgment by the Division Bench. The

Bench had actually affirmed the judgment of the learned single Judge setting aside the order passed by the Assistant Educational Officer directing recovery of the amount paid as salary and stopping further amount to the above said two teachers. The Bench, while affirming the judgment of the learned single Judge, further clarified that it will be open to the Superior Officer in the Department to take any action in accordance with law in the matter of approval of appointment of the aforementioned teachers. Taking note of the observations contained in Ext.P5 judgment, an order was passed by the Additional Director of Public Instructions as per Ext.P6 directing the regularisation of the approval of Smt.Jaseela P.K. and Sri.Renjith, after the formalities.

2. In circumstances where the appointment of the aforementioned teachers seems to have been directed to be approved, the proceedings, by which the salary paid to the said teachers has been fixed as the liability of the petitioner, requires reconsideration. Therefore, the concerned officer has to reconsider the issue insofar as the petitioner is concerned, in the light of Exts.P5 and P6.

3. Learned Government Pleader points out that during the pendency of the writ petition, the liability proposed in Ext.P2 was actually finalised overruling the objections of the petitioner, and nevertheless the petitioner has not challenged the said order. Technically, the submission seems to be correct. But, I am constrained to take note of the fact that the

petitioner has sought for a declaration that the proposal for fixation of the liability is otherwise bad. Since the appointment of the aforementioned teachers seems to have been directed to be approved during the pendency of this writ petition, the liability of the petitioner will have to be reconsidered.

In the circumstances the writ petition is disposed of directing the 2nd respondent to reconsider the issue regarding the fixation of the liability, if any, of the petitioner originally proposed under Ext.P2, in the light of Ext.P5 judgment and P6 order passed by the Additional Director of Public Instructions. The process shall be completed within two months from the date of receipt of a copy of this judgment, after hearing the petitioner and if on reconsideration, it is

found that there is no liability insofar as the petitioner is concerned, the amount due to him by way of Death cum Retirement Gratuity shall be disbursed to him within one month thereafter.

Sd/-

(V.GIRI)

JUDGE

sk/

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